

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 649 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BANK OF BARODA

Versus

MANUBHAI AMBALAL PATEL

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Appearance:

MR BHARAT J SHELAT for Petitioner  
SERVED for Respondent No. 1, 3, 4, 5, 6  
SERVED BY RPAD for Respondent No. 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 19/06/97

ORAL JUDGEMENT

1. Petitioner is a scheduled Nationalised Bank which has advanced various loans under various facilities to respondents No. 1 and 2. The respondents No. 1 and 2 are thus the borrowers from the same bank to whom various amounts were granted under various facilities. The respondents No. 3 to 6 appear to be the guarantors

though no definite statement is made about respondents No. 5 and 6. It is no doubt true that the different facilities were granted to the respondents by separate deed and on different dates under different documents, but the borrowers were the same. It was a suit to recover the amount due and payable by the borrowers at a foot of each account. When right to sue exist in favour of a nationalised bank, as against the same borrower under different facilities extended to the borrowers, one suit could be filed by issuing the notice and calling upon the borrowers to make the payment due and payable by the same borrowers under the various facilities. The creditor being the nationalised bank, the borrowers being the same parties, in different facilities, a suit to recover the amount due and payable at the foot of each facility is said to be maintainable and for each facility separate suit is not required to be filed. The suit of this nature is maintainable, the court fee can be paid on the total amount found due and payable at the foot of account with the creditor and separate court fee is not required to be paid for amount due and payable at the foot of each account. It appears that the Court Fees Inspector has submitted the report under Sec. 12(3) of the Bombay Court Fees Act, 1959 and has found that different facilities were sanctioned to the same borrowers on execution of different deeds or documents and, therefore, separate court fee was required to be paid for each account. He, therefore, found that the deposit of court fee to the extent of Rs. 4,200/- is not sufficient and he called upon the nationalised bank to pay other court fees. Against the said order, the present Civil Revision Application is filed.

In my opinion, the order of the Third Joint Civil Judge, Senior Division, Nadiad, dated 18.1.1988 accepting the objections of the Court Fees Inspector, is required to be quashed and set aside as both the Court Fees Inspector as well as the lower court have not understood that borrowers were the same and they have borrowed various amounts under various facilities from the nationalised bank. Since they were in default, they were called upon to make the payment found due and payable at the foot of each account. They failed to comply with the notice and hence second suit was filed. If the suit is not maintainable for misjoinder of causes and one suit could be filed for the purpose of recovery of various amounts granted to the same borrowers under various facilities, one fails to understand as to how the demand can be made for separate court fee for amount found due and payable at the foot of each account. The matter is even otherwise no longer res intergra as in Civil

Revision Application No. 712 of 1987, His Lordship Justice C.V.Jani (as His Lordship then was), decided on 29th January, 1993 elaborately discussed the law on the subject wherein after following the decision of the Bombay High Court, a clear view is taken that the court fee would be payable on the aggregate amount which is found due and payable at the foot of each and every account of facility granted in favour of the loanee by the nationalised bank. The position of law having thus been clear, the order of the court is required to be quashed and set aside and is hereby quashed and set aside and the trial court is directed to proceed further with the suit in accordance with law. Rule is made absolute to the aforesaid extent with no order as to costs.

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